

1801

EASEMENT — COUNTY COMMISSIONERS — MAY GRANT  
EASEMENT TO MUNICIPALITY OVER LANDS ACQUIRED  
PURSUANT TO SECTION 1078-62 G. C.—PROVISO, EASEMENT  
NOT INCONSISTENT WITH COUNTY'S USE OF PROPERTY—  
APPROPRIATIONS—COUNTY VETERANS HOUSING FUND.

SYLLABUS:

A board of county commissioners may grant an easement to a municipality over lands acquired pursuant to Section 1078-62, General Code, if such easement is not inconsistent with the county's use of the property.

Columbus, Ohio, May 25, 1950

Hon. Marvin A. Kelly, Prosecuting Attorney  
Scioto County, Portsmouth, Ohio

Dear Sir:

I am in receipt of your communication which reads as follows:

“The Board of County Commisisoners of Scioto County has requested an opinion from our office as to whether or not it may grant an easement to the municipality of Portsmouth of a part of the premises acquired under Section 1078-62 and the related sections and subsections.

“The writer has been unable after a full study of this Emergency Housing Act to find any authority for granting such an easement.”

A review of Section 1078-62 et seq., General Code, which govern emergency housing for veterans, discloses that the only provision in the Act for the disposition of the properties which may be acquired pursuant to its provisions is found in Section 1078-70, General Code, which reads as follows:

“The county commissioners of any county which has acquired property in accordance with provisions of this act may sell any or all of said property so acquired and deposit the proceeds of such sale in the general revenue fund of the county.”

It should be noted that the commissioners are authorized, but not required, to sell such property, and it should be specifically noted that no

provision is made in the Emergency Housing Act which prescribes the procedure that must be followed in the disposal of real estate of the county acquired through its provisions.

It is therefore only reasonable to assume that the legislature intended said real estate to be disposed of in the same manner as other property owned by the county.

This assumption is supported by reference to an opinion rendered by my immediate predecessor in office and which may be found in Opinions of the Attorney General for 1946, page 781, where the third branch of the syllabus is as follows:

“3. In the sale of property so acquired county commissioners must proceed in accordance with the provisions of Sections 2447 and 2447-1 of the General Code.”

See also Opinions of the Attorney General for 1946, p. 766, at page 768, where the following language was used in referring to the Emergency Housing Act:

“I can see no reason why real estate acquired pursuant to the provisions of the act in question should not be disposed of in accordance with the general statutes above quoted, when it is no longer needed for the purposes for which it was acquired.”

Thus informed that the property acquired pursuant to Section 1078-62, General Code, may be disposed of pursuant to the general statutes governing the disposition of county-owned land, your attention is directed to Section 2447, General Code, which reads in part as follows:

“If, in their opinion, the interests of the county so require, the commissioners may sell any real estate belonging to the county, and not needed for public use, or may lease the same, but no such lease shall be for a longer term than one year; provided, however, that in any event they may grant leases, rights and easements to municipalities or other governmental subdivisions for public purposes or to corporations not for profit for hospital or charitable purposes, including among other such purposes memorial structures and underground structures, on or in lands owned by the county where such lease, right or easement shall not be deemed by the commissioners to be inconsistent with the need of such land for public use by the county. \* \* \*”

This statute clearly gives authority to the county commissioners to grant easements to municipalities for public purposes when said land is no

longer needed by the county. See Opinions of the Attorney General for 1947, page 244.

It is therefore my opinion, in specific answer to the question advanced in your communication, that a board of county commissioners may grant an easement to a municipality over lands acquired pursuant to Section 1078-62, General Code, if such easement is not inconsistent with the county's use of the property.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.